

**ORDINANCE NO. 2011- 02**

**AN ORDINANCE TO AMEND VARIOUS PROVISIONS  
OF THE TOWN OF WINDSOR CODE OF ORDINANCES  
TO UPDATE REGULATIONS ON ADULT BUSINESSES**

The Board of Supervisors of the Town of Windsor, Dane County, Wisconsin, do ordain as follows:

1. Section 11-7-1(a) of the Town of Windsor Ordinances is hereby amended to read as follows:

“(a) It is a lawful purpose of the Town Board to enact rules and regulations as are necessary for the preservation of health and to prevent the spread of AIDS and other communicable or sexually transmitted diseases in the Town of Windsor, Dane County, Wisconsin. As reflected in the report of the Town of Windsor Plan Commission dated December 14, 2010, prepared after extensive research, ~~It~~ has been found by localities through the State of Wisconsin, particularly Madison, Middleton, McFarland, Milwaukee, Racine, Waukesha, Delafield, Kenosha, ~~and~~ West Allis Dane County and St. Croix County;, as well as communities around the country, including Denver, Colorado; Indianapolis, Indiana; Boston, Houston and Cleborne, Texas; Chattanooga, Tennessee; Newport News, Virginia; Oklahoma City, Oklahoma; Phoenix, Arizona; Kansas City, Missouri; Marion County, Indiana; Detroit, Michigan; and Bellevue and Seattle, Washington; as well as other communities around the country, that sexually oriented adult entertainment establishments are predisposed to the creation of unsafe and unsanitary conditions; that operators and employees of such businesses tend to participate in sex-related offenses on the premises, creating substantial law enforcement problems, and that the operational characteristics of such businesses have a deleterious effect on surrounding areas, resulting in neighborhood blight and reduced property values, especially when such businesses are concentrated in one area. Many of such establishments install movie viewing booths with doors in which patrons view videotapes, movies, films and other forms of entertainment characterized by their emphasis on depicting, describing or relating to specified sexual activities or specified anatomical areas, and that such booths have been and are being used by patrons to engage in sexual acts resulting in unsanitary, unhealthy and unsafe conditions in said booths and establishments. This Ordinance is intended to establish standards in order to prevent the spread of AIDS and other communicable or sexually transmitted diseases, and to ~~eliminate-prevent~~ the deleterious effects described above in the Town of Windsor.”

2. Section 11-7-1(c) of the Town of Windsor Ordinances is hereby created to read as follows:

“(c) The Town Board of the Town of Windsor has explicit authority under Wis. Stats. § 125.10(10) to adopt regulations governing the sale of alcohol beverages which are in addition to those set forth in Wis. Stats. Chap. 125.”

3. Section 11-7-22(b) of the Town of Windsor Ordinances is hereby amended to read as follows:

“(b) **Action.** The Town Board shall either approve, modify or reject the application; the reasons for the action taken shall be specified in the written record of the Town Board. Final action shall be taken on all applications within (ninety) 90 days of the filing of a complete application. Unless an extension of time is granted in writing by the applicant, failure to take action within 90 days shall be deemed an approval of the application.”

4. Section 11-7-23 of the Town of Windsor Ordinances is hereby amended to read as follows:

**“SEC. 11-7-23 RENEWALS.**

The holder of an annual license granted under this Article shall submit an application for renewal at least sixty (60) days before the expiration of the license. Such license may be renewed pursuant to the provisions of Section 11-7-22 as that Section applies to notice being given by the Town Clerk and provisions for publication and action by the Town Board. The fee for renewal shall be Two Hundred Fifty Dollars (\$250.00).”

5. Section 11-7-25(a) of the Town of Windsor Ordinances is hereby repealed and recreated to read as follows:

“(a) No establishment licensed under this Article may be located within 1,000 feet from any church, synagogue, temple, mosque, or any other place of worship, residential zoning district, park, school, playground, daycare center, public library or any other establishment licensed under this Article.”

6. Section 11-7-42(b)(10) of the Town of Windsor Ordinances is hereby amended read as follows:

“(10) Proof of right to occupy under Section ~~11-7-44(e)~~11-7-43(d) and”

7. Section 11-7-42(a)(2) of the Town of Windsor Ordinances is hereby amended read as follows:

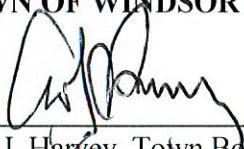
“(2) If the applicant is a corporation:

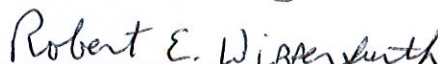


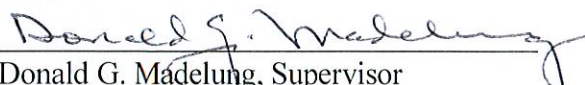
- a. All officers, directors, and others required to be named under Section 11-7-~~4342~~(b) shall be at least eighteen (18) years of age;
- b. Subject to Wis. Stats. Chap. 111, no officer, director, or other person required to be named under Section 11-7-~~4342~~(b) shall have been convicted of or pleaded *nolo contendere* to a felony or any crime involving moral turpitude, prostitution or other crime of a sexual nature in any jurisdiction within five (5) years immediately preceding the date of the application; and
- c. No officer, director or other person required to be named under Section 11-7-~~4342~~(b) shall have been found to have previously violated this Article within five (5) years immediately preceding the date of the application."

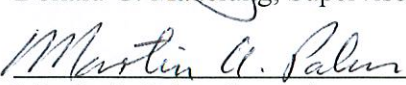
The above and foregoing Ordinance was duly adopted at a regular meeting of the Town Board of the Town of Windsor on the 20<sup>th</sup> day of Jan., 2011.

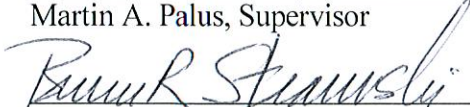
**TOWN OF WINDSOR**

  
\_\_\_\_\_  
Alan J. Harvey, Town Board Chairperson


  
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Robert E. Wipperfurth, Supervisor

  
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Donald G. Madelung, Supervisor

  
\_\_\_\_\_  
Martin A. Palus, Supervisor

  
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Bruce R. Stravinski, Supervisor

ATTEST:

  
\_\_\_\_\_  
Tina A. Butteris  
Finance Officer/Clerk-Treasurer

4844-6429-2872, v. 1

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Adult Business Regs Amd

**REPORT OF THE TOWN OF WINDSOR PLAN COMMISSION  
RELATING TO A REVIEW OF EXISTING TOWN OF WINDSOR ADULT  
BUSINESS REGULATIONS AND SECONDARY EFFECTS STUDIES**

This report constitutes the findings, conclusions and recommendations of the Town of Windsor Plan Commission relating to its review of Adult Business regulations in the Town of Windsor.

**I. INTRODUCTION.**

The Town of Windsor has existing Adult Business regulations which have been in place since 1997. This Ordinance reflects, within its statement of general purpose and its substantive provisions, the recognition that many adult business activities, including, but not limited to erotic dancing, involve expressive activities that are protected by the First Amendment to the United States Constitution. The ordinance does so by making clear it is intended to suppress only the negative secondary effects that often accompany such business activities rather than the expressive aspects of those activities.

Numerous decisions of the United States Supreme Court, lower federal courts and state courts have firmly established that local governments, while respecting the First Amendment rights of those engaged in adult businesses, may regulate any undesirable “secondary effects” such businesses may create. This is true even if regulation of secondary effects is accomplished by reference to the content of speech. As explained by Justice Kennedy in his concurring opinion in City of Los Angeles v. Alameda Books, 535 U.S. 425, 445-46, 122 S. Ct. 1728, (2002):

If a city can decrease the crime and blight associated with certain speech by the traditional exercise of its zoning power, and at the same time leave the quantity and accessibility of the speech substantially undiminished, there is no First Amendment objection. This is so even if the measure identifies the problem outside by reference to the speech inside – that is, even if the measure is in that sense content based.

Justice Kennedy went on to explain the concept of “regulating secondary effects” drawing an analogy between adult entertainment establishments and factories:

It is well documented that multiple adult businesses in close proximity may change the character of a neighborhood for the worse. Those same businesses spread across the city may not have the same deleterious effects. At least in theory, a dispersal ordinance causes these businesses to separate rather than to close, so negative externalities are diminished but speech is not.

The calculus is a familiar one to city planners, for many enterprises other than adult businesses also cause undesirable externalities. Factories, for example,



may cause pollution, so a city may seek to reduce the cost of that externality by restricting factories to areas far from residential neighborhoods. With careful urban planning a city in this way may reduce the costs of pollution for communities, while at the same time allowing the productive work of the factories to continue. Id. at 445-46.

Because of the passage of time and the lack of clear record as to the review process accompanying the adoption of Windsor's existing ordinance, the Town Board has asked the Plan Commission to review the current state of the law and the propensity of the business activities regulated within the existing ordinance to cause negative secondary effects to determine whether any changes are necessary to ensure the effectiveness and legality of the existing ordinance.

## II. SECONDARY EFFECTS STUDIES.

The Supreme Court has held that, before a local government may impose regulations which, while directed at harmful secondary effects, imposes burdens upon or regulates in reference to protected activities, some evidentiary basis must exist for the need for such regulation. Renton v. Playtime Theaters, Inc., 475 U.S. 41, 106 S. Ct. 925 (1986). Because Windsor currently contains no such businesses, and because a limited number of such businesses exist in the surrounding area, almost all of which are subject to regulations or conditions intended to limit or eliminate the existence of harmful secondary effects, a direct local study was deemed impractical and unlikely to produce useful information. The United States Supreme Court, however, held in Renton, that local governments need not conduct independent studies of their own communities. Local governments may rely on studies and the experiences of other communities "so long as whatever evidence the city relies upon is reasonably believed to be relevant to the problem that the city addresses." Id. at 51-52.

Many communities have conducted studies to determine whether such businesses create adverse "secondary effects" many of which are discussed and recognized in published court opinions including:

1. Young v. American Mini Theaters, Inc., 427 U.S. 50, 96 S. Ct. 2440, 49 L.Ed. 2d 310 (1976);
2. City of Renton v. Playtime Theaters, Inc., 475 U.S. 41, 106 S. Ct. 925, 89 L.Ed. 2d 29 (1986);
3. Lounge Management Ltd. v. Town of Trenton, 219 Wis. 2d 13, 580 N.W.2d 156 (1998);
4. City News and Novelty, Inc. v. City of Waukesha, 231 Wis. 2d 93, 604 N.W.2d 870 (1999);
5. Schultz v. City of Cumberland, 228 F.3d 831 (7<sup>th</sup> Cir. 2000);

6. City of Los Angeles v. Alameda Books, 535 U.S. 425, 122 S. Ct. 1728, 152 L. Ed. 2d 670 (2002);
7. Ben's Bar, Inc. v. Village of Somerset, 316 F.3d 702 (7<sup>th</sup> Cir. 2003);
8. GM Enterprises, Inc. v. Town of St. Joseph, Wisconsin, 350 F.3d 631 (7<sup>th</sup> Cir. 2003);
9. RVS, LLC v. City of Rockford, 361 F.3d 402 (7<sup>th</sup> Cir. 2004); and
10. Kraimer v. City of Schofield, 342 F.2d 807 (W. Dist. Wis. 2004).

The Plan Commission has further reviewed and considered the studies listed in Exhibit A to this report.

Although differences exist between these studies, such as the scope of the study, the issues upon which a particular study was focused or the particular problems in which the respective communities may have had a particular interest, these studies amply support the conclusion that adult businesses have the propensity to cause a host of negative secondary effects although different effects may be associated with different types of businesses. The secondary effects the Commission has identified include, but are not limited to, the following:

1. Such businesses can be predisposed to the creation of unsafe and unsanitary conditions.
2. Often operators and employees of such businesses are found to participate in sex-related offenses on the premises.
3. Many of such establishments install movie viewing booths with doors in which patrons view videotapes, movies, films and other forms of entertainment characterized by their emphasis on depicting, describing or relating to sexual activities and get used by patrons to engage in sexual acts resulting in unsanitary, unhealthy and unsafe conditions in said booths and establishments leading to the spread of sexually transmitted and other diseases.
4. Such businesses have been found to have a deleterious effect on surrounding areas through increased incidents of crime, including sexual assaults, resulting in neighborhood blight and reduced property values, especially when such businesses are concentrated in one area.
5. Such businesses can cause minors to be exposed to sexual images appropriate only for adults.

Apparent from the studies the Plan Commission has reviewed, considering the volume of literature, the wide range of community types and locations across the country, and the similarity of such experience, is that the propensity for such problems to occur appears to have



less to do with the size or demographics of the community in which the study is being conducted, than the nature of such businesses themselves and the manner and degree which they are subject to regulation.

It should be noted that, included within the Plan Commission's review are several studies which purport to contest the conclusion that secondary effects are created by adult businesses. While not devoid of valid points, the Plan Commission did not find these reports to credibly refute the volumes of research and anecdotal evidence supporting the conclusion that adult businesses frequently create adverse secondary effects.

For instance, these reports criticize the conclusions from secondary effects studies for not following a sufficiently rigorous scientific method, (e.g. Paul, Linz, Testing Assumptions Made by the Supreme Court Concerning the Negative Secondary Effects of Adult Businesses: A Quasi-Experimental Approach (2002)). The reports apply the same standard applicable to the admissibility of evidence in federal court to such studies. This approach ignores, however, that the rules of evidence applicable to meeting a burden of proof in trial is not analogous to the legislative decision making process and the quantum and quality of evidence a body of elected officials is entitled to rely upon in making a legislative decision.

Furthermore, despite the rigorous method advocated by the authors, their analysis failed to take into account other salient factors. For instance, one report critiqued the evidence relied upon by the Indianapolis City Council in adopting an ordinance to clarify existing regulations governing the licensure of adult entertainment businesses. According to the authors' study, they saw no increase in reported crime in connection with the opening of new businesses. Indianapolis, however, already had an ordinance in place, at least since approximately 1984 when it conducted its study of adult businesses. That the authors were unable to find any significant increases in crime due to the opening of new adult businesses during the time of their study, could just as easily be an indicator that the existing regulatory scheme had been working.

The Plan Commission concludes that the "contrary" studies did not cast sufficient doubt upon the conclusions derived from the studies supporting the propensity of adult businesses to create adverse secondary effects. While many of the "secondary effects" studies can be questioned as a result of the imperfect methodology, the "contrary" studies have not, in the Plan Commission's judgment, refuted all of the findings and anecdotal evidence that the Plan Commission has considered demonstrating the propensity of Adult Businesses to cause adverse secondary effects.

### **III. RECOMMENDATIONS.**

Based upon the Plan Commission's review, it concludes that a need continues to exist to ensure Adult Businesses seeking to locate in Windsor be subject to reasonable regulations to ensure Windsor does not suffer from potential adverse secondary effects from such businesses. The Plan Commission finds that, for the most part, Windsor's existing regulations continue to be relevant to addressing such secondary effects and are consistent with the current state of the

law relating to First Amendment limitations on the regulation of expressive conduct related to such businesses. The Plan Commission, however, recommends the following changes be made to Windsor's existing regulations:

1. Update Section 11-7-1(a) to reflect the additional studies and analysis completed by the Plan Commission.
2. Amend Section 11-7-22 to provide for a time limit within which Adult Entertainment Licenses shall be reviewed to comply with current First Amendment jurisprudence relating to prior restraint of speech. The Plan Commission recommends final action on such applications be taken within 90 days of the filing of the application unless an extension is agreed to in writing. This timeframe will permit all existing notice procedures, allow some flexibility to permit the gathering of additional information during the review process or to accommodate other unforeseen events in the course of review while ensuring an application will not be effectively denied due to inaction. The Plan Commission further recommends that notice be provided to applicants within 30 days of application if minimal application requirements are not met thereby foreclosing the ability to forward the application to the Town Board for consideration.
3. Amend Section 11-7-23 to provide for a reduced fee of \$250 for renewal applications. New applications under Section 11-7-22(f) are \$500 with one-half of the fee refunded if the application is denied. This structure suggests only half the fee is expected to be necessary to help finance ongoing inspection and enforcement activities. Since renewal applications should generally require less staff time and expense to review, the renewal fee should reflect this reduced expense.
4. Amend Section 11-7-25 to be consistent with Dane County regulations.
5. Amend Section 11-7-42 in a manner similar to and for the same reasons as the recommended amendments to Section 11-7-22 described in paragraph 11-7-41.

Dated this 14th day of December, 2010.

**PLAN COMMISSION**

By: Deanne E. Symbolik  
Chairperson



## **EXHIBIT A**

### **SECONDARY EFFECTS STUDIES AND REPORTS**

#### **I. STUDIES AND REPORTS SUPPORTING THE EXISTENCE OF ADVERSE SECONDARY EFFECTS.**

Cleveland, Ohio (August 1977)

City of Phoenix (May 1979)

City of Oklahoma City (March 1986)

Manatee County, Florida (June 1987)

Hecht, Report to the American Center for Law and Justice on the Secondary Impacts of Sex Oriented Businesses (March 31, 1996)

City of Indianapolis, Indiana (January 1984)

City of Austin, Texas (May 1986)

City of Bellevue, Washington (January 1988)

State of Minnesota: Report of the Attorney General's Working Group on the Regulation of Sexually Oriented Businesses (June 1989)

New Hanover County, North Carolina (July 1989)

City of Tucson, Arizona (May 1990)

City of Garden Grove, California (October 1991)

Oklahoma City, Oklahoma (June 1992)

St. Croix County, Wisconsin (September 1993)

City of Rome, Georgia (March 1995)

Hecht: Report to the American Center for Law and Justice on the Secondary Impacts of Adult Businesses (March 31, 1996).

City of St. Mary's, Georgia (July 1996)

City of Newport News (Virginia, 1996)

City of Houston, Texas (1997)

City of Cleburne, Texas (October 1997)

## **EXHIBIT A**

Town and Village of Ellicottville, New York (January 1998)

City of Denver, Colorado (January 1998)

City of Kansas City, Missouri (March 1998)

Toledo, Ohio, Survey Findings and Recommendations of Sexually Oriented Businesses: (August 26, 2002)

McCleary and Meeker: A Methodological Critiques of the Linz-Paul Report: A Report to the San Diego city Attorney's Office. (March 12, 2003)

Forth Worth, Texas, Survey of Appraisers, Fort Worth and Dallas; Effects of Land Uses on Surrounding Property Values, (September 2004)

McCleary and Weinstein, Do "Off-Site" Adult Businesses Have Secondary Effects?: Legal Doctrine, Social Theory and Empirical Evidence. (November 2007).

Texas City Attorneys Association: Survey of Texas Appraisers. Secondary Effects of Sexually-Oriented Businesses on Market Values. (June, 2008)

McCleary; Rural Hotspots: The Case of Adult Businesses. Criminal Justice Policy Review, 2008.

## **II. STUDIES AND REPORTS CRITICIZING OR FAILING TO FIND EXISTENCE OF ADVERSE SECONDARY EFFECTS.**

McCarthy, Rensky & Linz, Measuring Secondary Effects of Adult Businesses Using Spatio-Temporal Estimation of Real Estate Price Appreciation (2001)

Paul and Linz, Testing Assumptions Made by the Supreme Court Concerning the Negative Secondary Effects of Adult Businesses: The Quasi Experimental Approach (2002)

Linz, Paul and Yao, Secondary Effects of Peep Show Establishments in San Diego, California (paper presented at 2004 Society for the Scientific Study of Sexuality Western Region Conference, San Diego, California)

Linz, Land, Williams, Paul and Ezell, An Examination of the Assumption that Adult Businesses are Associated with Crime in Surrounding Areas; A Secondary Effect Study in Charlotte, North Carolina, Law and Society Review, Volume 38, Number 1 (2004)

Linz, Paul and Yao Evaluating the Potential Secondary Effects of Adult Video/Book Stores in Indianapolis (March 9, 2004)

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